

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

G.S., by and through his parents and next friends, BRITTANY AND RYAN SCHWAIGERT; S.T., by and through her mother and next friend, EMILY TREMEL; J.M., by and through her mother and Next friend, KIMBERLY MORRISE; and on behalf of those similarly situated,

Case No. 2:21-cv-2552-SHL-atc

Plaintiffs,

v.

GOVERNOR BILL LEE, in his official Capacity as GOVERNOR OF THE STATE OF TENNESSEE and SHELBY COUNTY, TENNESSEE

Defendants.

**DEFENDANT SHELBY COUNTY, TENNESSEE'S
RESPONSE TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

Defendant Shelby County, Tennessee ("Shelby County") submits this *Response to Plaintiffs' Motion for Class Certification*, filed August 28, 2021. (ECF No. 16). Shelby County does not oppose the relief requested in the Motion for Class Certification, including the appointment of the Donati Firm as class counsel.

Subject to that position, Shelby County states that at no time in this litigation has it opposed the substantive relief requested by Plaintiffs (and, as the Court is well-aware, is seeking similar relief in a companion lawsuit under different claims). The "but-for" causation of Plaintiffs' alleged harms is the issuance of Executive Order No. 84 by Defendant Governor Bill Lee ("Governor Lee"). *See Lewis v. Humboldt Acquisition Corp., Inc.*, 681 F.3d 312 (6th Cir. 2012) (en banc)

(establishing the causation standard for ADA cases).¹ The ongoing nature of this litigation and any potential class certification are due to Governor Lee's continued opposition to the relief requested by Plaintiffs. Consequently, while Shelby County takes no position as to the ultimate recovery by Plaintiffs from Governor Lee of their costs, including attorneys' fees, pursuant to Federal Rule of Civil Procedure 23(h), Shelby County explicitly reserves all of its defenses, including whether costs of this action, including attorneys' fees incurred by Plaintiffs, should be taxed to Shelby County.

Respectfully submitted,

BURCH, PORTER AND JOHNSON, PLLC

s/Tannera George Gibson

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¹ On August 27, 2021, Shelby County issued Amended Health Order No. 25, effective August 31, 2021, which recognized the requirements of Executive Order No. 84 only so long as it remained in effect. See Amended Health Order No. 25, Shelby County Health Department (Aug. 27, 2021), <https://www.shelbytnhealth.com/DocumentCenter/View/2318/Health-Order-No-25>

CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2021, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will operate to provide notice of this filing to all counsel of record in this case.

s/Tannera George Gibson

Tannera George Gibson